

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

DIANE BARTON on behalf of herself  
and others similarly situated,

Plaintiff,

v.

TEMESCAL WELLNESS, LLC

Defendant.

Case No. 4:20-cv-40114

**JOINT STATEMENT**

Plaintiff Diane Barton (“Plaintiff”) and defendant Temescal Wellness, LLC (“Temescal Wellness” or “Defendant”) (collectively, the “Parties”), through their undersigned counsel, submit this Joint Statement pursuant to Fed. R. Civ. P. 16(b) and 26(f) of and Local Rule 16.1.

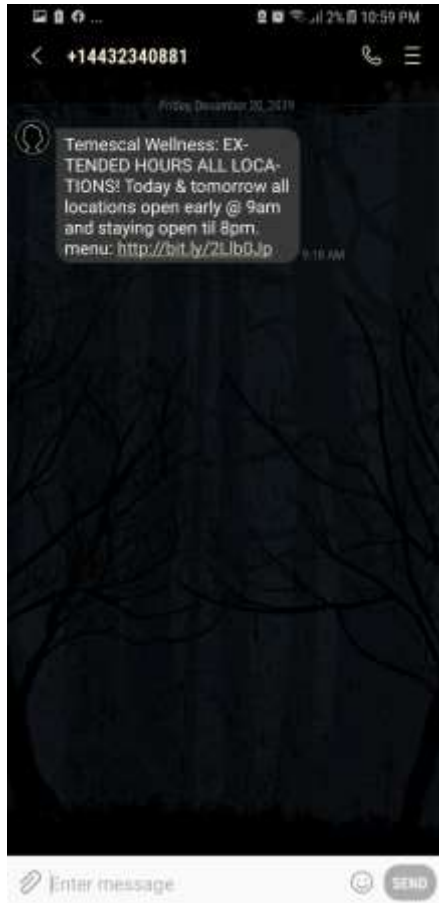
**I. FED. R. CIV. P. 26(F) REPORT**

**A. Nature and Basis of Claims**

**1. Plaintiff’s Statement**

The Plaintiff Diane Barton has never consented to receive solicitations related to the Defendant Temescal Wellness’s goods or services. *See* ECF No. 9 at ¶ 37. Despite that fact, she received several telemarketing text messages from Temescal Wellness on December 20, 2019 and January 23, 2020. *Id.* at ¶ 24.

The Defendant promotes its business and solicits individuals through this medium, as it did with the Plaintiff. One example of such a text message is:



*Id.* at ¶ 25. Because telemarketing campaigns generally place calls to thousands or even millions of potential customers *en masse*, the Plaintiff brings this action on behalf of the following proposed nationwide class:

**National Do Not Call Registry Class:** All persons in the United States whose telephone numbers were on the National Do Not Call Registry, but who received more than one telephone solicitation telemarketing call from or on behalf of Temescal Wellness with a 12-month period, from four years prior the filing of the Complaint.

*Id.* at ¶ 42.

## 2. Defendant's Statement

Ms. Barton opted-in to receive text messages from Temescal Wellness on November 15, 2019.

Ms. Barton opted-out of receiving text messages from Temescal Wellness on January 23, 2020.

### **B. Possibilities of Settling or Resolving the Case**

Pursuant to Local Rule 16(c), Plaintiff made a settlement demand to Defendant on June 2, 2021.

### **C. Proposed Discovery Plan**

#### **1. Proposed Discovery Plan**

The Plaintiff anticipates that discovery will be needed on the requisites of Fed. R. Civ. P. 23 in order to support her anticipated motion for class certification as well as the merits of Plaintiff's TCPA claims in order to prepare for trial, or to oppose any summary judgment motion that the Defendant may file. The Plaintiff will seek from the Defendant, or third parties retained on their behalf, (1) ESI regarding the text messages placed in this case and any purported leads related thereto; (2) email and other communications related to telemarketing and any relationship with a vendor who sent text messages for the Defendant; (3) ESI related to any purported consent to receive text messages; (4) Defendant's policies and procedures concerning TCPA compliance; and (5) telemarketing complaints received by Defendant and their responses thereto.

The Defendant will seek all text messages and communications the Plaintiff may have received from the Defendant.

#### **Electronically Stored Information**

The Parties expect much discovery will be in electronic form and intend to stipulate or agree to the form or forms in which electronic discovery should be produced or otherwise made available. The Plaintiff has given the Defendant his electronic production preservation and the parties continue to confer on the issue. To the extent any issues regarding the format for

electronic discovery arise, the Parties will confer in good faith before bringing them to the attention of the Court.

2. Privilege and Preservation

The Parties do not anticipate any unusual or unique privilege issues. The Parties agree to enter into a Confidentiality Order to govern the production of confidential information and disclosures, and are attaching a proposed Protective Order for the Court's consideration. The Parties have taken the appropriate steps to preserve discoverable information, including ESI. The Parties are also submitting a proposed ESI Order.

3. Limitations on Discovery

The Parties do not anticipate any changes to the limitations set forth in the Rules.

4. Additional Orders

The Parties have agreed to service of discovery requests and responses via electronic mail, subject to the timing provisions of Fed. R. Civ. P. 6(d).

**D. Consent to Magistrate**

The parties do not consent to proceeding before a magistrate judge.

**II. PROPOSED PRETRIAL SCHEDULE**

EVENT	PARTIES' PROPOSAL
Initial Disclosures	July 15, 2021
Deadline to Amend Pleadings	September 2, 2021

Fact Discovery Deadline	November 22, 2021
Expert Reports	December 13, 2021
Expert Deposition Deadline	January 21, 2022
Summary Judgment filing deadline	By January 28, 2022
Class Certification filing deadline	By January 28, 2022
Status Conference post MSJ and Class Certification	TBD
Trial	TBD

PLAINTIFF,  
By her attorneys

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Defendant

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 21, 2021, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the court's electronic filing system.

/s/ Anthony I. Paronich  
Anthony I. Paronich